IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
v.	)	
	)	
SEABOARD FOODS LP, and	)	Civil No.
	)	
PIC USA, INC.,	)	
	)	
Defendants.	)	

CONSENT DECREE

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Appendices:

Whereas the United States of America (the "United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), has filed a complaint alleging that the Defendants, Seaboard Foods LP and PIC USA, Inc., have violated Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq. ("RCRA") by failing to comply with an EPA Administrative Order issued on June 26, 2001 under RCRA;

Whereas the Complaint alleges that Defendants failed to comply with several requirements of the EPA Administrative Order, which directed Defendants to, *inter alia*, investigate suspected contamination at and near various of Defendants' farming operations, as listed in Appendix A, with the exception of the Choate Farm in Kingfisher County, Oklahoma, which is not subject to EPA's Administrative Order;

Whereas Defendants do not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint;

Whereas Defendants contest the factual and legal basis for EPA's Order, as well as the existence of any contamination resulting from Defendants' activities;

Whereas the Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest;

NOW THEREFORE, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to, *inter alia*, 28 U.S.C. §§ 1331, 1345, and 1355 and also has personal jurisdiction over the Parties. Venue lies in this District pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1395(a), because Defendants have conducted business in this judicial district and the violations alleged in the

Complaint are alleged to have occurred in this judicial district. For purposes of this Decree, or any action to enforce this Decree, Defendants consent to the Court's jurisdiction over this Decree or such action and over Defendants, and consent to venue in this judicial district.

2. Only for purposes of this Consent Decree, Defendants agree that the Complaint states claims upon which relief may be granted.

3. Notice of the commencement of this action has been given, in writing, to the State of Oklahoma.

II. APPLICABILITY

4. The obligations of this Consent Decree apply to and are binding upon the United States and upon Defendants and any successor or other entities otherwise bound by law.

5. No transfer of ownership or operation of any Seaboard Foods facility subject to this Decree, whether in compliance with this Paragraph or otherwise, shall relieve Defendants of their obligation to ensure that the terms of the Decree are implemented, unless (1) the transferee agrees to undertake the obligations of this Decree and to be substituted for the Defendant(s) as a Party under the Decree and be thus bound by the terms thereof, and (2) the United States consents to relieve Defendant(s) of its obligations. On or before such transfer, Defendant Seaboard Foods shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer to EPA Region 6 and the United States Department of Justice, in accordance with Section XIII of this Decree (Notices and Submittals). Any attempt to transfer ownership or operation of any Seaboard Foods facility subject to this Decree without complying with this Paragraph constitutes a violation of this Decree.

6. Defendants shall provide a copy of this Consent Decree to all officers and supervisory employees of the Defendants or their agents whose duties might reasonably include

compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent Decree. Defendants shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

7. In any action to enforce this Consent Decree, Defendants shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. DEFINITIONS

8. Terms used in this Consent decree that are defined in RCRA or in regulations promulgated pursuant to the RCRA shall have the meanings assigned to them in the RCRA or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

a. "Complaint" shall mean the complaint filed by the United States in this action;

b. "Consent Decree" or "Decree" shall mean this Decree and all appendices attached hereto (listed in Section XXII), and all work plans called for by the Decree and approved by EPA in conformance with the Decree;

c. "Day" shall mean a calendar day unless expressly stated to be a working day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day;

d. "Defendants" shall mean Seaboard Foods LP (formerly known as Seaboard Farms, Inc.) and PIC USA, Inc.;

e. "Direct Push Technology" (DPT) shall mean the technique used for performing subsurface investigations by driving, pushing, and/or vibrating small-diameter,

hollow steel rods into the ground, also sometimes referred to as “drive” or “drive point” or “push” technology;

f. “EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States;

g. “EPA Administrative Order” shall mean the order EPA issued to Seaboard and PIC International Group, Inc., Order No. RCRA-06-2001-0908, under RCRA on June 26, 2001 directing, *inter alia,* certain investigations of alleged contamination at and in the vicinity of the Facilities listed in Appendix A of this Decree (except Choate Farm);

h. “Facilities” shall mean Defendant’s Oklahoma farms, as identified in Appendix A of this Decree;

i. “Field Capacity” is the maximum amount of water that a soil can retain after excess water from saturated conditions has been drained by the force of gravity;

j. “Infrastructure Source(s)” shall mean, for purposes of this Consent Decree only, man-made structures or equipment that store or transport animal waste or effluent, including but not limited to barns, pits, lagoons, piping (including, but not limited to, subsurface piping), lift stations, and settling basins, and excluding above-ground land application and above-ground land application equipment, such as pivots, sprinklers, overland piping, and hard hose equipment;

k. “Land Application Area” is property to which manure or process wastewater from a production area is or may be applied;

l. “MNA” or “Monitored Natural Attenuation” shall have the same meaning as that provided in *Use of Monitored Natural Attenuation at Superfund, RCRA Corrective Action, and Underground Storage Tank Sites*, U.S. EPA, OSWER Directive 9200.4-17P (1999), where it is defined to mean “the reliance on natural attenuation processes (within the context of a

carefully controlled and monitored site cleanup approach) to achieve site-specific remedial objectives within a time frame that is reasonable compared to that offered by other more active methods. The "natural attenuation processes" that are at work in such a remediation approach include a variety of physical, chemical, or biological processes that, under favorable conditions, act without human intervention to reduce the mass, toxicity, mobility, volume, or concentration of contaminants in soil or groundwater. These in situ processes include biodegradation, dispersion, dilution, sorption, volatilization, and chemical or biological stabilization, transformation, or destruction of contaminants.";

m. "Paragraph" shall mean a portion of this Decree identified by an arabic numeral;

n. "Parties" shall mean the United States and Defendants;

o. "Section" shall mean a portion of this Decree identified by a roman numeral; and

p. "United States" shall mean the United States of America, acting on behalf of the U.S. EPA.

IV. CIVIL PENALTY

9. Within 30 days after the Effective Date of this Consent Decree, Defendants shall pay the sum of $240,000 as a civil penalty. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with instructions to be timely provided to Defendants following lodging of the Consent Decree by the Financial Litigation Unit of the U.S. Attorney's Office for the Western District of Oklahoma. At the time of payment, Defendants shall simultaneously send written notice of payment and a copy of any transmittal documentation (which should reference DOJ case number 90-5-1-1-07570 and the civil action number of this case) to the United States in accordance with Section XIII of this

Decree (Notices and Submittals). Failure to pay the civil penalty shall subject Defendants to interest accruing from the date payment is due until the date payment is made or until the 15th day after payment is due, whichever occurs first, at the rate prescribed by 28 U.S.C. § 1961, and shall render Defendants liable for all charges, costs, fees, and penalties established by law for the benefit of a creditor or of the United States in securing payment. Failure to pay the civil penalty for more than 14 days after it is due shall subject Defendants to the stipulated penalty set forth in Paragraph 14(a).

V. COMPLIANCE REQUIREMENTS

10. Defendants Seaboard Foods LP and PIC USA, Inc., as specified in this Consent Decree, must commence, undertake, complete, and maintain each and every requirement and term set forth in Appendices B, C, and D, including the requirements and terms established and approved under work plans established and approved under this Decree. Defendants must commence, undertake, complete, and maintain all such requirements and terms in compliance with the schedules specified in or established under this Decree.

VI. REPORTING REQUIREMENTS

11. Defendants shall comply with the reporting requirements set forth in Appendices B, C, and D.

12. In addition to any other express reporting requirement in this Consent Decree, if Defendants violate any requirement of this Consent Decree, Defendants shall notify the United States of such violation and its likely duration in writing within ten working days of the day Defendants first become aware of the violation, with an explanation of the violation's likely cause and of the remedial steps taken, and/or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, Defendants will include a statement to that effect in the report. Defendants will investigate to determine the

cause of the violation and then will submit an amendment to the report, including a full explanation of the cause of the violation, within 30 days of the day Defendants become aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves Defendants of their obligation to provide the requisite notice for purposes of Section VIII (Force Majeure).

13. In the case of any violation or other event that may pose an immediate threat to the public health or welfare or the environment, Defendants will notify EPA orally or by electronic or facsimile transmission as soon as possible, but not later than 24 hours after Defendants first knew of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

VII. STIPULATED PENALTIES

14. Defendants shall be liable for Stipulated Penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section VIII (Force Majeure). A violation includes Defendants' failing to comply with any requirement, term, standard, or schedule established by or covered by Sections IV, V, VI, or X of this Decree.

Consent Decree Violation	**Stipulated Penalty (per day, per violation, unless otherwise noted)**
(a) Failure to pay the civil penalty, as specified in Section IV (Civil Penalty) of this Consent Decree, for more than 14 days after the due date	$5,000 per day beginning the 15th day after the due date
(b) Failure to comply with any of the requirements in Section 1.2.1 of Appendix B regarding access	$500
(c) Failure to timely perform the DPT field study required in Section 1.2.2 of Appendix B	$500 per day per violation for the first 14 days, $1,000 per day per violation for the next 14 days; 3,000 per day per violation thereafter

(d) Failure to timely perform any of the requirements in Section 1.2.4 of Appendix B regarding MNA monitoring	$1,000 per day per violation for the first 14 days, $2,500 per day per violation for the next 14 days; 5,000 per day per violation thereafter
(e) Failure to timely submit any sampling results required by this Consent Decree, or to timely notify EPA regarding such results, including sampling of ground water, soils, leachate, or effluent	$500 per day per sample for the first 14 days; $1,000 per day per sample for the next 14 days; $2,000 per day per sample thereafter
(f) Failure to timely submit the annual reports or any other submittals required by this Consent Decree, including by Paragraph 13, Sections 1.2.5 or 1.6 of Appendix B, Section 2.7 of Appendix C, or Section 3.3 of Appendix D	$500 per day per violation for the first 14 days; $1,000 per day per violation for the next 14 days; $2,000 per day per violation thereafter
(g) Failure to timely submit, modify, or implement, as approved, the plans, studies, analyses, protocols, or other submittals required by Section 1.4 of Appendix B (Alternative Remedies), Sections 2.2 (Lacey 6 Miller Infrastructure Response) or 2.6 (Lacey 3 Watson Response) of Appendix C, or Section 3.5 (Fairview Nursery Complex Response) of Appendix D	$500 per day per violation for the first 14 days, $1,000 per day per violation for the next 14 days; $3,000 per day per violation thereafter
(h) Failure to timely complete lagoon removal, or to comply with any of the lagoon removal requirements, as specified in Section 2.1 of Appendix C	$1,000 per day per violation for the first 14 days, $2,500 per day per violation for the next 14 days; $5,000 per day per violation thereafter
(i) Failure to comply with the requirements of Section 2.4(b) of Appendix C regarding buffer zones	$500
(j) Failure to comply with any applicable requirement of Section 2.4(c) of Appendix C regarding trigger conditions at the specified farms, except for the requirements in 2.4(c)(6)	$500 per day per violation for the first 14 days, $1,000 per day per violation for the next 14 days; $3,000 per day per violation thereafter
(k) Failure to comply with the requirements of Section 2.4(c)(6)	$2,500
(l) Failure to timely perform annual pressure testing, repairs, or retesting, as required by Section 2.5 of Appendix C	$1000

(m) Failure to timely comply with the testing and monitoring requirements of Section 3.1, 3.2, or 3.4(c)(1) or 3.4(c)(2) of Appendix D	$500 per day per violation for the first 30 days; $750 per day per violation for the next 30 days; $1,000 per day per violation thereafter
(n) Where a response action is required by Section 3.4 of Appendix D, application of effluent on subject fields prior to the implementation of Defendants' selected response action (except for the failure to perform testing requirements set forth in 3.4(c)(1) or 3.4(c)(2))	$6,000 per application per field if application of effluent is done prior to implementation of Defendants' selected response action
(o) Failure to provide EPA or its authorized representatives splits of any samples taken by Defendants pursuant to this Decree, as required by Paragraph 33	$100 per sample
(p) Failure to provide access to EPA or its authorized representatives to any facility covered by this Decree, as required by Section X	$500 per day (until the day on which Seaboard notifies EPA that access is granted)

15. Except as otherwise specified above, stipulated Penalties under this Section shall begin to accrue on the day after performance is due or on the day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated Penalties shall accrue simultaneously for separate violations of this Consent Decree. Defendants shall pay any Stipulated Penalty within 30 days of receiving the United States' written demand, subject to the provisions of Section IX (Dispute Resolution).

16. Unless otherwise provided in this Consent Decree, stipulated penalties shall continue to accrue as provided in Paragraph 15 above during any Dispute Resolution, with interest on accrued stipulated penalties payable and calculated at the rate established by the Secretary of the Treasury, pursuant to 28 U.S.C. § 1961, but need not be paid until the following:

a. If the dispute is resolved by agreement, or by a written decision of EPA that is not appealed to the Court, Defendant shall pay accrued stipulated penalties determined

to be owing, together with accrued interest, to the United States within thirty (30) days of the effective date of the agreement or of the receipt of EPA's written decision;

b. If the dispute is appealed to the Court and EPA prevails in whole or in part, Defendants shall pay all accrued stipulated penalties determined by the Court to be owing, together with accrued interest, within sixty (60) days of receipt of the Court's decision or order, except as provided in Subparagraph c, below;

c. If the Court's decision is appealed by any Party, Defendants shall, within thirty (30) days of receipt of the final appellate court decision, pay all accrued stipulated penalties determined to be owing, together with accrued interest.

17. All stipulated penalties shall be paid in the manner set forth in Section IV (Civil Penalty) of this Consent Decree.

18. If Defendants fail to pay stipulated penalties in compliance with the terms of this Consent Decree, Defendants shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due.

19. The United States may, in the unreviewable exercise of its discretion, reduce or waive Stipulated Penalties otherwise due it under this Consent Decree.

20. The stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States by reason of Defendants' failure to comply with any requirement of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of statutory or regulatory requirements, Defendants shall be allowed a credit for any Stipulated Penalties paid against any statutory penalties imposed for such violation.

VIII. FORCE MAJEURE

21. A "force majeure event" is any event beyond the control of Defendants, their contractors, or any entity controlled by Defendants that delays the performance of any obligation under this Consent Decree despite Defendants' best efforts to fulfill the obligation. "Best efforts" includes using best efforts to anticipate any potential force majeure event and to address the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include Defendants' financial inability to perform any obligation under this Consent Decree.

22. Defendants shall provide notice to the designated EPA Project Manager orally or by electronic or facsimile transmission as soon as possible, but not later than five (5) days after the time Defendants first knew, or should have known, of a claimed force majeure event. Defendants shall also provide written notice, as provided in Section XIII of this Consent Decree (Notices and Submittals), within twenty-one (21) days of the time Defendants first knew, or should have known, of the event. The written notice shall state the anticipated duration of any delay; its cause(s); Defendants' past and proposed actions to prevent or minimize any delay; a schedule for carrying out those actions; and Defendants' rationale for attributing any delay to a force majeure event. Failure to provide oral and written notice as required by this Paragraph shall preclude Defendants from asserting any claim of force majeure.

23. If the United States agrees that a force majeure event has occurred, the time for the performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by the United States for such time as is necessary to complete those obligations. An extension of time to perform the obligations affected by a force majeure event shall not, by itself, extend the time to perform any other obligation. Where the United States

agrees to an extension of time, the appropriate modification can be made only pursuant to Section XVII of this Consent Decree (Modification).

24. If the United States does not agree that a force majeure event has occurred, or does not agree to the extension of time sought by Defendants, the United States' position shall be binding, unless Defendants invoke Dispute Resolution under Section IX of this Consent Decree. In any such dispute, Defendants bear the burden of proving, by a preponderance of the evidence, that each claimed force majeure event is a force majeure event; that Defendants gave the notice required by Paragraph 23; that the force majeure event caused any delay Defendants claim was attributable to that event; and that Defendants exercised best efforts to prevent or minimize any delay caused by the event.

IX. DISPUTE RESOLUTION

25. The dispute resolution procedure provided by this Section shall be available to resolve all disputes arising under this Consent Decree, provided that the Party invoking such procedure has first made a good faith attempt to resolve the matter with the other Parties.

26. The dispute resolution procedure required herein shall be invoked by one Party giving written notice to the other Parties advising of a dispute pursuant to this Section. The notice shall describe the nature of the dispute and shall state the noticing Party's position with regard to such dispute. The Parties receiving such a notice shall acknowledge receipt of the notice, and the Parties in dispute shall expeditiously schedule a meeting to discuss the dispute informally not later than fourteen (14) days following receipt of such notice, or at a later time by mutual agreement of the Parties.

27. Disputes submitted to dispute resolution under this Section shall, in the first instance, be the subject of informal negotiations among the disputing Parties. Such period of informal negotiations shall not extend beyond thirty (30) calendar days from the date of

the first meeting among the disputing Parties' representatives, provided that the Parties may agree in writing to shorten or extend this period.

28. If the disputing Parties are unable to reach agreement during the informal negotiation period, the United States shall provide Seaboard and PIC with a preliminary decision, setting forth its position regarding the dispute. Defendants shall have thirty (30) days to provide a response to such preliminary decision, together with any supporting documentation. Following this 30-day period, the United States shall issue a final decision, which shall be considered binding unless, within forty-five (45) calendar days thereafter, Seaboard or PIC seeks judicial resolution of the dispute by filing a petition with the Court. The United States may respond to the petition within forty-five (45) calendar days of filing. Where appropriate, the United States may allow the Parties to submit supplemental statements of position after the United States issues its final decision.

29. Where the nature of the dispute is such that a more timely resolution of the issue is required, the time periods set out in this Section may be shortened upon motion of one of the parties to the dispute.

30. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendants under this Consent Decree that is not directly in dispute. Stipulated Penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 16, above. If Defendants do not prevail on the disputed issue, Stipulated Penalties shall be assessed and paid as provided in Section VII (Stipulated Penalties).

31. After the resolution of any dispute under this Section, nothing prohibits either Party from seeking Court approval to modify this Consent Decree, in appropriate circumstances, so as

to extend the schedule or deadlines for the completion of required activities that were the subject of dispute resolution. Where this Court enters such an extension or schedule modification, Defendants shall be liable for stipulated penalties for their failure thereafter to complete the work in accordance with the extended or modified schedule, provided that they shall not be precluded from asserting that a Force Majeure Event has caused or may cause a delay in complying with the extended or modified schedule.

32. In any dispute under this Section, Defendants shall bear the burden of demonstrating that their position complies with this Consent Decree. All disputes related to Sections 1.3.1 (Periodic Performance Evaluations) or 1.4 (Alternative Remedies) in Appendix B, Sections 2.2 (Lacey 6 Miller Infrastructure Response) or 2.6 (Lacey 3 Watson Response) in Appendix C, or Section 3.5 (Fairview Nursery Complex Response) in Appendix D, are to be decided on the administrative record, and the United States' position shall be upheld unless it is held to be arbitrary and capricious or otherwise not in accordance with law. With respect to all other disputes, the Parties reserve their rights to argue their respective positions as to the applicable standard of law for resolving the particular dispute at issue. An administrative record of any dispute submitted to dispute resolution under this Section shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section.

X. INFORMATION COLLECTION AND RETENTION

33. During the pendency of this Decree, the United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry to any facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials and in conformance with any reasonable biosecurity requirements of the facility, to:

a. monitor the progress of activities required under this Consent Decree;

b. verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;

c. independently obtain samples and conduct such tests as the United States deems necessary to assess Defendants' performance under this Decree and, upon request, splits of any samples taken pursuant to this Decree by Defendants or their representative, contractors, or consultants;

d. obtain documentary evidence, including photographs and similar data using a camera, video camcorder, sound recorder, or other similar documentary type equipment relevant to assessing Defendants' performance under this Decree;

e. interview site personnel and contractors; inspect records, operating logs, and contracts related to the Defendants' performance under this Consent Decree; and

f. otherwise assess Defendants' compliance with this Consent Decree.

If Defendants deny access to any farm or facility on the basis of biosecurity requirements, EPA may request a written justification of such denial from Seaboard's Director of Environmental Affairs or, if such person cannot be reached, from Seaboard's Director of Environmental, Maintenance and Construction, and Seaboard shall provide such justification by electronic mail and, if requested by EPA, also by facsimile (electronic mail address and facsimile number to be provided by EPA at the time of the request) within 12 hours of receipt of EPA's request.

34. Upon request, Defendants shall provide EPA or its authorized representatives splits of any samples taken by Defendants pursuant to this Decree. Upon request, EPA shall provide Defendants splits of any samples taken by EPA pursuant to this Decree.

35. Pursuant to this Section, any denial of the access and entry rights provided in Paragraph 33 shall be construed as a violation of the terms of this Decree subject to the penalty provisions outlined in Section VII (Stipulated Penalties) of this Decree.

36. Until five (5) years after the termination of this Consent Decree, Defendants shall retain, and shall instruct their contractors and agents to preserve, all non-identical copies of all records, documents, or other information (including documents, records or other information in electronic form) in their or their contractors' or agents' possession or control, or that come into their or their contractors' or agents' possession or control, and that relate to Defendants' performance of their obligations under the Consent Decree. If any single Appendix is terminated prior to the termination of the Consent Decree, as to the documents that relate to Defendants' performance of their obligations under that Appendix, this document retention requirement shall extend until five (5) years after the termination of that Appendix. This record retention requirement shall apply regardless of any corporate or institutional document-retention policy to the contrary. At any time during this record-retention period, the United States may request copies of any documents or records required to be maintained under this Paragraph.

37. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendants to maintain records or information imposed by applicable federal or state laws, regulations, or permits.

XI. COVENANTS NOT TO SUE, REOPENERS, AND RESERVATIONS OF RIGHTS

A. COVENANTS NOT TO SUE

38. In consideration of the actions that will be performed and the payments that will be made by the Defendants under the terms of this Consent Decree, and except as specifically

provided below, the United States covenants not to sue or take administrative action against Defendants:

a) for the violations the United States specifically alleged in the Complaint filed in this action, through the date of lodging of this Consent Decree;

b) pursuant to section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6973, section 504 of the Clean Water Act ("CWA"), 33 U.S.C. § 1364, section 1431 of the Public Health Service Act (or "Safe Drinking Water Act" or "SDWA"), 42 U.S.C. § 300(i), or section 106 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9606, for corrective action or other response measures intended to address a release of nitrate-nitrogen from Infrastructure Sources that occurred (i) prior to lodging of this Decree and (ii) at Lacey 1 (Bryan Sow & Norris Farms), Lacey 4 (Grimes Finisher), Lacey 6 (Miller), Lacey 3 (Watson), or the Fairview Nursery Complex (as these Facilities are specified in Appendix A); and

c) pursuant to section 7003 of RCRA, 42 U.S.C. § 6973, section 1431 of the SDWA, 42 U.S.C. § 300i, section 106 of CERCLA, 42 U.S.C. § 9606, or section 504 of the CWA, 33 U.S.C. § 1364, and for a period of two years commencing upon lodging of this Consent Decree, for corrective action or other response actions intended to address nitrate-nitrogen contamination downgradient of the Fairview Nursery Complex that is attributable to Defendants' activities at that Facility other than releases from Infrastructure Sources that occurred prior to lodging of this Decree.

These covenants are conditioned upon the Defendants' performance of their obligations under this Consent Decree. These covenants extend only to the Defendants and not to any other person.

39. The covenants set forth in Paragraph 38 shall take effect upon the receipt of the Defendants' payment of the civil penalty set forth in Paragraph 9.

B. REOPENERS

40. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right of the United States to institute proceedings in this action or in a new action to compel Defendants to perform further work and for such other relief as is provided by law, if:

a) conditions at, or caused or contributed to by, the Facilities listed in Paragraph 38(b)(ii) above, previously unknown to EPA, are discovered, or

b) information, previously unknown to EPA, is received, in whole or in part, and these previously unknown conditions or information together with any other relevant information indicates that the provisions of this Consent Decree are not protective of human health or the environment.

41. For purposes of Paragraph 40, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of lodging of this Decree regarding the Farms listed in Appendix A. All such information and conditions shall be set forth in the Administrative Record supporting this matter (herein referred to as the "Administrative Record" or "Record"), which shall be compiled as follows: No later than 60 days after entry of this Decree, EPA shall provide Defendants with an index to the proposed Administrative Record and provide Defendants an opportunity to review the entire Record at EPA's Regional offices in Dallas, Texas. At any time within the first 60 days following such notification to Defendants of the availability of the proposed Record, Defendants may submit a request to EPA that additional documents or other materials be included in the Record. EPA will, within 30 days of receipt of such request, inform Defendants as to whether such documents or

other materials will be included in the Record and, if EPA declines to include any document or other material, EPA will provide a supporting explanation. Any disputes regarding the inclusion of documents or other materials in the Administrative Record pursuant to this Paragraph shall be resolved pursuant to Section IX (Dispute Resolution).

C. SPECIALIZED RESERVATIONS OF RIGHTS

42. Reservation of Rights as to Ground Water Contamination from Defendants' Activities at the Fairview Nursery Complex. Effective upon entry of this Consent Decree, and notwithstanding any other provision of this Decree, the United States reserves all statutory authorities relating to imminent and substantial endangerment, including but not limited to the right to seek injunctive relief pursuant to section 7003 of RCRA, 42 U.S.C. § 6973, section 1431 of the SDWA, 42 U.S.C. § 300i, section 504 of the CWA, 33 U.S.C. § 1364, or section 106 of CERCLA, 42 U.S.C. § 9606, relating to nitrate-nitrogen contamination downgradient of the Fairview Nursery Complex that is attributable to Defendants' activities at that Facility other than releases from Infrastructure Sources that occurred prior to lodging of this Decree.

43. Before filing a complaint seeking a response action based on one of the authorities named in Paragraph 42, or issuing an administrative order seeking a response action based on one of the authorities named in Paragraph 42, at any time within the first six years after entry of this Consent Decree, the United States shall:

a) notify Defendants of the basis and authority for its finding and provide Defendants a reasonable opportunity to confer with EPA regarding EPA's concerns, appropriate responses, and any ongoing or proposed response actions;

b) take any information provided by Defendants during such opportunity to confer into account in determining whether and how to exercise EPA's statutory authorities; and

c) invoke the procedures set forth in Paragraph 3.5.3 of Appendix D (Fairview Response Plan) unless EPA finds that these procedures are insufficient to adequately protect human health or the environment.

44. Reservation of Rights as to Nitrate-Nitrogen Contamination from Infrastructure Sources at the Lacey 1 (Bryan Sow & Norris Farms), Lacey 4 (Grimes Finisher), Lacey 6 (Miller), Watson and the Fairview Nursery Complex. Effective (a) at Lacey 1 (Bryan Sow and Norris Farms), Lacey 4 (Grimes Finisher), and Lacey 6 (Miller) upon the termination, pursuant to Section 1.5 of Appendix B, of either the MNA remedy or any Alternative Remedy described in Section 1.4, and (b) at Watson Farm and the Fairview Nursery Complex upon entry of this Consent Decree, and notwithstanding any other provision of this Decree, the United States reserves all statutory authorities relating to imminent and substantial endangerment, including but not limited to the right to seek injunctive relief pursuant to section 7003 of RCRA, 42 U.S.C. § 6973, section 1431 of the SDWA, 42 U.S.C. § 300i, section 504 of the CWA, 33 U.S.C. § 1364, or section 106 of CERCLA, 42 U.S.C. § 9606, to address a release of nitrate-nitrogen from Infrastructure Sources that occurred prior to lodging of this Decree at any of the Facilities listed in Paragraph 38(b)(ii) above.

45. Before filing a complaint seeking a response action based on one of the authorities named in Paragraph 44, or issuing an administrative order seeking a response action based on one of the authorities named in Paragraph 44, the United States shall:

a) notify Defendants of the basis and authority for its finding and provide Defendants a reasonable opportunity to confer with EPA regarding EPA's concerns, appropriate responses, and any ongoing or proposed response actions; and

b) take any information provided by Defendants during such opportunity to confer into account in determining whether and how to exercise EPA's statutory authorities.

46. If the Defendants wish to contest any of the United States' conclusions made pursuant to Paragraph 45 regarding the exercise of its above-named statutory authorities, following the notification and opportunity to confer set forth in subparagraphs 45(a) and (b) above, Defendants may seek judicial resolution of such dispute pursuant to Section IX (Dispute Resolution) of this Decree and applicable principles of law for resolving such disputes.

D. GENERAL RESERVATIONS OF RIGHTS

47. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 38. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under RCRA, the CWA, the SDWA, CERCLA, or their implementing regulations, or under other federal laws, regulations, or permit conditions, except as expressly specified in Paragraph 38.

48. Except as expressly provided in this Consent Decree, the United States retains all authority and reserves all rights to take any and all actions authorized by law. Except as otherwise provided in this Consent Decree, Defendants retain any rights and defenses with respect to any such actions taken by the United States, and entry of this Consent Decree and Defendants' consent to comply therewith shall not constitute a waiver of any valid defense, either legal or equitable, to such action.

E. OTHER PROVISIONS

49. Upon entry of this Consent Decree, the Administrative Order, Order No. RCRA-06-2001-0908, which EPA issued on June 26, 2001 under RCRA shall be deemed withdrawn.

50. Defendants are responsible for achieving and maintaining compliance with all applicable federal, state, and local laws, regulations, and permits; and Defendants' compliance

with this Consent Decree shall be no defense to any action commenced pursuant to said laws, regulations, or permits. This Consent Decree is not a permit, or a modification of any permit, under any federal, state, or local laws or regulations. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendants' compliance with any aspect of this Consent Decree will result in compliance with the law.

51. This Consent Decree does not limit or affect the rights of Defendants or of the United States against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Defendants, except as otherwise provided by law.

52. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

53. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, or other appropriate relief relating to the Facilities or Defendants' violations, Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, provided, however, that nothing in this Paragraph is intended to affect the enforceability of the covenants set forth in Paragraph 38.

XII. COSTS / FEES

54. Except as specified in this Section of the Decree, all the Parties shall bear their own costs and fees of this action, including attorneys' fees.

55. The United States shall be entitled to collect the costs (including attorneys' fees) incurred in any enforcement necessary to collect any portion of the Civil Penalty or any Stipulated Penalties due but not paid by Defendants.

XIII. NOTICES AND SUBMITTALS

56. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

As to the United States:
Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, DC 20044-7611
Re: DOJ No. 90-5-1-1-07570

Director
Compliance Assurance and Enforcement Division
United States Environmental Protection Agency
Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Regional Counsel
Office of Regional Counsel
United States Environmental Protection Agency
Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Gene Keepper, CHMM, P.G., RCRA Project Manager (6EN-HX)
Compliance Assurance and Enforcement Division
United States Environmental Protection Agency
Region 6
1445 Ross Avenue, Suite 900
Dallas, TX 75202-2733
Telephone: (214) 665-2280
Telecopier: (214) 665-7264
E-mail: Keepper.Gene@epa.gov

As to Defendant Seaboard Foods LP:
Jennifer Charno Nelson
Director of Environmental Affairs
Seaboard Foods LP
9000 W. 67th Street, Suite 200
Shawnee Mission, KS 66202

David Becker
Vice President and General Counsel
Seaboard Corporation
9000 W. 67th Street, Suite 300
Shawnee Mission, KS 66202

Richard Schwartz
Crowell & Moring, LLP
1001 Pennsylvania Ave., NW
Washington, DC 20004-2595

As to Defendant PIC USA, Inc.:
Gerry Daignault, Finance Director
PIC USA, Inc.
100 Bluegrass Commons Blvd.
Suite 2200
Hendersonville, TN 37075

Leslie Sanders, Counsel
PIC USA, Inc.
100 Bluegrass Commons Blvd.
Suite 2200
Hendersonville, TN 37075

Carrick Brooke-Davidson
Andrews Kurth LLP
111 Congress Avenue, Suite 1700
Austin, TX 78701
512-320-9263
512-542-5201 (fax)

As to both Defendants, Seaboard Foods LP and PIC USA, Inc.
Mark P. Hemingway
Geomatrix Consultants
5725 Highway 290 West
Suite 200B
Austin, TX 78735
Business: (512) 494-0333
Business Fax: (512) 494-0334

57. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice addresses or, in the case of the EPA, the Project Manager provided above.

58. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

59. Where Defendants are required to provide oral notification to EPA, Defendants shall provide such oral notice to the designated EPA Project Manager named above and/or to the current Director of EPA Region VI, Compliance Assurance and Enforcement Division.

60. Two (2) copies of all documents, including Plans, Reports, and other correspondence to be submitted pursuant to this Decree, shall be hand-delivered or sent by certified mail, return receipt requested, to the EPA Project Manager. Respondents shall also submit a copy of all submittals on 3.5 inch computer disk or compact disk.

61. In all instances wherein this Decree requires written submissions to EPA, each submission shall be signed and certified as follows by a duly authorized representative of the submitting Defendant(s); provided that annual reports, requests for termination of any Appendix or this Consent Decree, and the 21-day written notice of a force majeure event required by Paragraph 22 shall be signed and certified as follows by an official of the submitting Defendant(s):

> To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing and willful submission of a materially false statement.

Any submissions made pursuant to Section IX (Dispute Resolution) and paragraph 41 (regarding compilation of the Administrative Record) may be signed by an attorney representing the submitting Defendant, and, if so signed, need not be certified.

XIV. SUBMISSIONS REQUIRING EPA APPROVAL

62. After review of any plan, report, or other item that is required to be submitted pursuant to this Consent Decree and approved by EPA, EPA shall, in writing: (a) approve the submission; (b) approve the submission upon specified conditions; (c) approve part of the submission and disapprove the remainder; (d) disapprove the submission or (e) any combination of the above.

63. If the aforementioned submission is approved pursuant to Paragraph 62(a), Defendants shall take all actions required by the plan, report, or other item, as approved. If the submission is conditionally approved or approved only in part, pursuant to Paragraph 62(b) or (c), Defendants shall, upon written direction of EPA take all actions required by the approved plan, report, or other items that EPA determines are technically severable from any disapproved portions, subject to Defendants' right to dispute only any conditions imposed by EPA or any disapproved portions under Section IX of this Decree (Dispute Resolution).

64. If the submission is disapproved in whole or in part pursuant to Paragraph 62(c) or (d), Defendants shall, within forty-five (45) days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval. Any Stipulated Penalties applicable to the original submission as provided in Section VII of this Decree shall accrue during the forty-five (45)-day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of Defendants' obligations under this Decree, Defendants shall be deemed to

have failed to submit a plan, and the Stipulated Penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

65. If a resubmitted plan, report, or other item that requires EPA approval, or portion thereof, is disapproved in whole or in part, EPA may again require Defendants to correct any deficiencies, in accordance with this Section, subject to Defendants' right to invoke Dispute Resolution and EPA's right to seek Stipulated Penalties as provided in the preceding Paragraphs.

66. All plans, reports, and other items required to be submitted to and approved by EPA under this Consent Decree shall, upon written approval by EPA, be enforceable under this Consent Decree. In the event EPA approves or conditions a portion of a plan, report, or other item required to be submitted to EPA under this Consent Decree, such approval shall be in writing, and the approved, modified or conditioned portion shall be enforceable under this Consent Decree.

XV. EFFECTIVE DATE

67. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court.

XVI. RETENTION OF JURISDICTION

68. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree (Dispute Resolution, Section IX) or entering orders modifying this Decree (Modification, Section XVII), or effectuating or enforcing compliance with the terms of this Decree.

XVII. MODIFICATION

69. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to any term of this Decree, it shall be effective only upon approval by the Court.

70. Upon their being approved by EPA, any work plans called for by Appendices B, C, or D of this Decree and otherwise in conformance with the requirements of this Decree shall be incorporated by reference into this Decree.

XVIII. TERMINATION

71. After Defendants have satisfactorily completed performance of all of their obligations under this Consent Decree, or all of their obligations under any single Appendix to this Consent Decree, and have paid the civil penalty and any accrued Stipulated Penalties as required by this Consent Decree, Defendants may serve upon the United States a Request for Termination of the Consent Decree, or any single Appendix thereto, stating that Defendants have satisfied those requirements, together with all necessary supporting documentation. If the United States agrees that the entire Decree, or the relevant Appendix thereof, may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree in full or the relevant Appendix thereof.

72. If the United States does not agree that the Decree or the relevant Appendix may be terminated, Defendant may invoke Dispute Resolution under Section IX of this Decree.

73. Any termination of this Consent Decree pursuant to this Section, whether by the consent of the Parties or by Order of this Court, shall not affect or otherwise terminate the provisions of Section XI (Covenants Not to Sue, Reopeners, and Reservations of Rights), which shall survive any termination of this Decree or any Appendix or subpart thereof.

XIX. PUBLIC PARTICIPATION

74. This Consent Decree shall be lodged with the Court and is subject to a period for public notice and comment procedures described at 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or

inadequate. This Consent Decree is also subject to the opportunity for a public meeting as described in Section 7003(d) of RCRA, 42 U.S.C. § 6973(d). Defendants consent to entry of this Consent Decree without further notice.

XX. SIGNATORIES / SERVICE

75. The Order of the Environmental Appeals Board, Consent Agreement and Proposed Final Order for Animal Feeding Operations – Seaboard Foods LP (Aug. 21, 2006), provides, inter alia, that "the [Consent Agreement and Proposed Final Order] shall be null and void in its entirety on September 16, 2006, unless, prior to that date, the United States lodges in federal district court one or more proposed Consent Decrees that alone, or in combination, resolve alleged violations of RCRA, the Clean Air Act, the Clean Water Act, CERCLA and EPCRA, at Respondent's Farms." In light of this Order, the signatures of the authorized representative of the Defendants affixed hereto, and Defendants' consent to be bound by this Consent Decree, are valid if and only if this Consent Decree is lodged in this Court no later than September 15, 2006.

76. Each undersigned representative of Defendants and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

77. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis.

78. Defendants agree not to oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Defendants in writing that it no longer supports entry of the Decree.

79. Defendants and the United States agree to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal

service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XXI. INTEGRATION / APPENDICES

80. This Consent Decree and its Appendices – plus any EPA-approved, post-entry work plans which were called for by an Appendix to this Decree and which were approved by EPA in conformance with this Decree – constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersede all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than the Appendices, which are attached to and incorporated in this Decree, and submittals that are subsequently submitted and approved pursuant to this Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XXII. LIST OF APPENDICES

81. The following appendices are attached to and incorporated into this Consent Decree:

"Appendix A" is List of Facilities;

"Appendix B" is Ground Water Remediation;

"Appendix C" is Changes to Barns, Lagoons, and Piping;

"Appendix D" is Effluent Management, Testing, Application and Response Actions

XXIII. FINAL JUDGMENT

82. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Defendants.

Dated and entered this __ day of _____, ____.

_____

UNITED STATES DISTRICT JUDGE

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Seaboard Foods LP and PIC USA, Inc., (W.D. Okla.).

FOR THE DEFENDANT, Seaboard Foods LP:

_____	_____
Date	Rod K. Brenneman President, Seaboard Foods LP
_____	_____
Date	Richard Schwarz Attorney for Seaboard Foods LP Crowell & Moring, LLP 1001 Pennsylvania Ave., NW Washington, DC 20004-2595

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Seaboard Foods LP and PIC USA, Inc., (W.D. Okla.).

FOR THE DEFENDANT, PIC USA, Inc.:

_____	_____
Date	Gerry Daignault Finance Director PIC USA, Inc.
_____	_____
Date	Carrick Brooke-Davidson Attorney for PIC USA, Inc. Andrews Kurth L.L.P 111 Congress Avenue, Suite 1700 Austin, TX 78701

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Seaboard Foods LP and PIC USA, Inc., (W.D. Okla.).

FOR THE UNITED STATES OF AMERICA:

_____

SUE ELLEN WOOLDRIDGE
Assistant Attorney General
Environmental and Natural Resources Division
United States Department of Justice
Washington, DC 20530

_____

NICOLE VEILLEUX
Trial Attorney
Environmental Enforcement Section
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Seaboard Foods LP and PIC USA, Inc., (W.D. Okla.).

FOR THE UNITED STATES OF AMERICA (continued):

JOHN C. RICHTER
United States Attorney for Western District of Oklahoma

/s/ Steven K. Mullins
_____
STEVEN K. MULLINS, OBA #6504
Assistant United States Attorney
210 Park Avenue, Suite 400
Oklahoma City, OK 73102
405/553-8804
Steve.mullins@usdoj.gov

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Seaboard Foods LP and PIC USA, Inc., (W.D. Okla.).

FOR THE UNITED STATES OF AMERICA (continued):

_____

GRANTA Y. NAKAYAMA
Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Seaboard Foods LP and PIC USA, Inc., (W.D. Okla.).

FOR THE UNITED STATES OF AMERICA (continued):

_____

RICHARD E. GREENE
Regional Administrator
U.S. Environmental Protection Agency - Region 6

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA	)	
	)	
Plaintiff	)	
	)	
v.	)	Case No.
	)	
SEABOARD FOODS, LP	)	
	)	
and	)	
	)	
PIC USA, INC.	)	
	)	
Defendants.	)	
_____	)	

APPENDICES TO CONSENT DECREE

APPENDIX A: LIST OF FACILITIES

1. Lacey 1 (a.k.a. Bryan Sow & Norris Farms; S62; F436); N/2 Section 18, T19N, R8W(IM), in Kingfisher County, Oklahoma

2. Lacey 3 (a.k.a. Watson; F424); SE/4 Section 27, T19N, R8W (IM), in Kingfisher County, Oklahoma

3. Lacey 4 (a.k.a. Grimes Finisher; F425); NW/4 Section 2, T18N, R8W (IM), in Kingfisher County, Oklahoma

4. Lacey 6 (a.k.a. Miller: F426); NE/4 Section 19, T18N, R7W (IM), in Kingfisher County, Oklahoma

5. Fairview Nursery Complex (Fairview Nurseries 1-4) (F155-158); parts of Section 30, T2ON, R14W (IM), in Major County, Oklahoma

6. Choate (a.k.a. Choate Sow Farm; S65); SE/4 Section 3 and E/2 Section 10, T19N, R8W (IM); in Kingfisher County, Oklahoma.

APPENDIX B: GROUND WATER REMEDIATION

1.0 GROUND WATER REMEDY

Seaboard and PIC (collectively "Defendants") shall take the actions described herein to reduce nitrate-nitrogen concentrations in the ground water at Lacey 1 Bryan, Lacey 4 Grimes, and Lacey 6 Miller in accordance with the schedule and remedy performance requirements for ground water at each of these locations. Defendants may use Monitored Natural Attenuation ("MNA"), as described below, to achieve nitrate-nitrogen concentration reduction in the ground water only if the Defendants periodically demonstrate that the use of MNA meets or exceeds the performance requirements set out in this Appendix. Defendants' MNA remediation and related ground water evaluations are based upon EPA OSWER Directive No. 9200.4-17P (1999). If Defendants fail to demonstrate timely compliance with terms established herein for MNA, Defendants shall undertake the Alternative Remedies (described in Section 1.4) to meet the Remedy Performance Requirements set forth in Section 1.1.

1.1 REMEDY PERFORMANCE REQUIREMENTS

The overall remedy requirement is to restore the ground water affected by suspected leakage from Infrastructure Source(s) within the time frame set by this Consent Decree (see Sections 1.3 and 1.4 below). The cleanup requirement for these ground water remedies (including MNA) is the higher concentration of the following:

a.) 10 mg/L for nitrate-nitrogen, or

b.) Background Water Quality, defined as the water quality in a sample from a monitoring well or temporary well located up-gradient of the barn or lagoon area that is considered to be the source. The background data used will be nitrate levels at the time the remedy's performance is being evaluated (i.e., the background cleanup standard for a farm is expected to change with time). The concentration up-gradient of the Infrastructure Source(s) shall be used as the cleanup standard, without adjustment.

1.2 MONITORED NATURAL ATTENUATION (MNA) REMEDY: INITIAL ACTIVITIES

1.2.1 ACCESS

Within 30 days after entry of this Consent Decree, Defendants shall contact all applicable land owners and seek to obtain access for Direct Push Technology ("DPT") and well placement on private property. In the event that site access agreements are not obtained through commercially reasonable efforts within 60 days after entry of this Decree, Defendants shall notify the EPA Project Manager by telephone as soon as possible, but no later than 48 hours after Defendant determines that access has been denied. Commercially reasonable efforts shall include, but not be limited to, requiring Defendants to pay reasonable rental costs and reasonable compensation for actual losses sustained by the owner or occupants of the realty. Within 7 days of such oral notification, Defendants shall notify EPA in writing of the failure to gain such site access agreements and provide information regarding Defendants' efforts to obtain such agreements. EPA and ODAFF will provide support in obtaining off-site access for both DPT and well placement, as needed. If neither EPA nor ODAFF are successful in obtaining access, Defendants shall, within 15 days of such notification from EPA, propose, for EPA's approval, alternative locations for the placement of DPT or wells, and proceed with the remedy as specified.

1.2.2 DPT STUDIES

At Lacey 1 Bryan, Lacey 4 Grimes, and Lacey 6 Miller, Defendants shall perform a DPT field study to delineate nitrate-nitrogen in ground water that is above the applicable Section 1.1 remedy standard and is substantially due to suspected leakage from Infrastructure Source(s). Defendants shall use these DPT data to guide the subsequent placement of MNA monitoring wells. Defendants shall complete such DPT field studies within 30 days of securing the necessary access (or, if access is denied, within 30 days of securing EPA's approval for alternative locations), and shall report results of such field studies and proposed MNA well locations to EPA within 30 days of the completion of the DPT field studies.

1.2.3 MODELING

Following the DPT field studies, Defendants shall run the MODFLOW predictive computer model, or another EPA-approved alternative model, to predict MNA behavior, and report results to EPA upon completion. Defendants shall update this predictive model at the 2-year milestone referenced below, incorporating data from the first 5 sampling events, and report results to EPA upon completion.

1.2.4 MONITORING

a.) At Lacey 1 Bryan, Lacey 4 Grimes, and Lacey 6 Miller, Defendants shall:

1) retain an existing monitoring well immediately down-gradient of the source to provide source area water quality data as part of MNA monitoring;

2) if Background Water Quality is the remedy performance requirement, as set forth in Section 1.1.b, retain or install a background well immediately up-gradient of the from the Infrastructure Source(s);

3) screen MNA wells across the upper 10 feet of the saturated zone; and

4) collect a soil sample from below the water table at each new MNA monitoring well location and analyze it for denitrifying bacteria.

b.) Defendants shall complete MNA well placement within 60 days of Defendants' receipt of EPA's approval of proposed MNA well locations. Defendants shall place MNA monitoring wells at locations approved by EPA as follows:

1) MNA monitoring wells at Lacey 1 Bryan and Lacey 6 Miller shall be placed along the axis of the area of elevated nitrate-nitrogen in ground water at a typical spacing of approximately 500 feet. One or two additional wells shall be installed to monitor plume width if needed, based upon plume geometry as observed by the DPT study. At Lacey 1 Bryan, the MNA well system shall also include existing well 519-04. No fewer than four but no more than six new wells at each of Lacey 1 Bryan and Lacey 6 Miller shall be installed for evaluation of MNA performance.

2) Two MNA wells shall be placed to monitor the plume at Lacey 4 Grimes. Existing well 585-03 shall be retained as a source area monitor well. If any Lacey 4 Grimes MNA well location falls within the farm's land application area, then Defendants shall maintain a no-application buffer zone at each such well location, using valve stops sufficient to ensure that the well will measure and perform as intended, notwithstanding its location in a land application area. Well locations and buffer zones shall be structured to minimize any loss of application area, consistent with the purpose of well placements.

1.2.5 REPORTING

Defendants shall provide a report to EPA regarding well placement at Lacey 1 Bryan, Lacey 4 Grimes, and Lacey 6 Miller detailing the activities undertaken pursuant to this section 1.2 as part of the Annual Report required by section 1.6, below.

1.3 MNA REMEDY: IMPLEMENTATION

If Defendants fail to satisfy the criteria and/or standards for the MNA Remedy as specified in Sections 1.3.1, the Defendants shall perform an Alternate Remedy in compliance with the requirements of Section 1.4.

1.3.1 PERIODIC PERFORMANCE EVALUATIONS

Defendants shall evaluate periodically, as specified herein, the efficacy of the MNA ground water remediation. This evaluation shall be based upon changes in the concentration and extent of the ground water plume. Defendants shall sample, analyze, evaluate, and report on the efficacy of the MNA remedy as follows.

1.3.1.1 Sampling. Defendants shall sample ground water from the MNA wells upon well installation and on a semi-annual basis thereafter for two years (i.e., five sampling events), and then annually thereafter. Upon installation, the sampling event analytical parameters shall include nitrate-nitrogen, nitrite-nitrogen, ammonia-nitrogen, and major ions. Ammonia-nitrogen shall be measured until it is below 10 mg/L; samples from subsequent events need be tested for nitrate-nitrogen only. All sampling events, including the first event, shall include field measurement for pH, specific conductance, dissolved oxygen, temperature, oxidation-reduction potential, and depth to water. Following Defendants' completion of the first five sampling events, Defendants shall propose a schedule for annual sampling for EPA approval. Defendants shall report all analytical results and field measurements of each sampling event to EPA within 45 days of sample collection.

1.3.1.2 Start Date. The Start Date for MNA, and thus the measuring point for the 2, 5, 10, and 15 year milestones noted below, shall be the date of initial MNA well sampling conducted pursuant to section 1.3.1.1 for the particular facility. If, however, the maximum concentration observed in MNA wells at a given Farm is less than 45 percent of the maximum concentration observed in the May 2002 sampling event for that Farm, following notification of such fact to EPA, Defendants may utilize May 2002 as the Start Date with respect to the milestones described in 1.3.1.5 and 1.3.1.6, and to utilize the concentrations observed in May 2002 as the starting point for the concentration reduction calculations described in 1.3.1.7.

1.3.1.3 Reporting Requirements. Defendants shall report to EPA on the completed performance evaluation for each specified milestone year, as required below, within 120 days of Defendants' receipt of preliminary laboratory analytical data from performance evaluation sampling.

1.3.1.4 Periodic Performance Requirements. Defendants shall use collected ground water data for the performance evaluation at the 2, 5, 10, and 15-year milestones of the MNA remedy performance (assuming MNA is the remedy in place at those times). At each

time milestone, Defendants may continue to use MNA as the remedial approach until the next performance milestone (without modification or enhancement) if and only if the Defendants demonstrate that the area of investigation satisfies at least one of the following criteria:

a.) Decreasing plume core concentrations, with stable or decreasing overall plume size (a "reducing plume");
b.) Decreasing overall plume size, with stable or decreasing core concentrations (a "reducing plume");
c.) Decreasing plume core size, with stable or decreasing plume core concentrations and stable or decreasing overall plume size (a "shrunken plume"); or
d.) Increasing overall plume size, with decreasing overall plume concentrations (a "nearly stable plume").

If Defendants fail to meet at least one of these four criteria, Defendants shall perform an Alternate Remedy in compliance with the requirements of Section 1.4.

1.3.1.5 10-Year Evaluation of MNA. If MNA is still in use 10 years from the Start Date, in order to continue with MNA rather than performing an Alternate Remedy in compliance with Section 1.4, Defendants shall, at the 10-year milestone, demonstrate that the maximum off-property nitrate-nitrogen concentrations show at least a 56 percent reduction in nitrate-nitrogen relative to the applicable cleanup standard (Section 1.1). The percent reduction shall be calculated as illustrated in Section 1.3.1.7.

If Background Water Quality is the remedy performance requirement as set forth in Section 1.1.b, and Defendants suspect that the up-gradient well is not representative of background, Defendants may perform a DPT ground water investigation of the immediately up-gradient area and use those data to propose an alternative background well location. Any alternative well location must be approved by EPA. For performance evaluations, however, background water quality shall be determined using an actual well (permanent or temporary), and not a DPT sample.

1.3.1.6 15-Year Evaluation of MNA. If MNA is still in use 15 years from the Start Date, in order to continue with MNA rather than performing an Alternate Remedy in compliance with Section 1.4, Defendants shall, at the 15-year milestone, shall evaluate the remedy's performance at that time according to the following scenarios, as applicable:

a.) Evaluating MNA Performance "On-property" (i.e., property within the boundaries identified in Appendix A). If, at the end of the 15th year after the Start Date, the maximum concentration measured within the on-property portion of the plume represents at least a 90 percent reduction in nitrate-nitrogen relative to the applicable cleanup standards (calculated in accordance with Section 1.3.1.7 below), then Defendants may continue to use MNA as a remedy without modification or enhancement until cleanup standards are achieved, subject to (1) the requirement to perform continuing performance evaluations every 5 years, and (2) the continuation of the current or comparable property use (i.e., non-residential). If these criteria are not satisfied, Defendants shall perform an Alternate Remedy in compliance with Section 1.4.

b.) Evaluating MNA Performance "Off-property" (i.e., property beyond the boundaries provided in Appendix A).

1) If, at the end of the 15th year after the Start Date, the maximum concentration measured within the off-property portion of the plume represents at least 90 percent reduction in nitrate-nitrogen relative to the applicable cleanup standards (calculated in accordance with Section 1.3.1.7 below), then Defendants may continue to use MNA without modification or enhancement for an additional two years. If this criterion is not satisfied, Defendants shall perform an Alternate Remedy in compliance with Section 1.4.

2) If, at the end of the 17th year after the Start Date, the maximum concentration measured within the off-property portion of the plume represents at least 92 percent reduction in nitrate-nitrogen relative to the applicable cleanup standards (calculated in accordance with Section 1.3.1.7 below), then Defendants may continue to use MNA without modification or enhancement, subject to the requirements to report MNA ground water monitoring results to EPA annually (pursuant to Sections 1.3.1.1 and 1.6), and to perform continuing performance evaluations every 5 years. If this criterion is not satisfied, Defendants shall perform an Alternate Remedy in compliance with Section 1.4.

1.3.1.7 Calculation of Concentration Reduction.

Defendants shall use the following calculation methods for comparing observed concentration reductions to the 56, 90 and 92 percent reductions discussed in sections 1.3.1.5 and 1.3.1.6 above, as well as for similar calculations.

a.) If 10 mg/l is the remedy performance requirement, as set forth in Section 1.1.a: The percentage reduction in concentration shall be calculated as the change between the initial and final concentrations relative to the remedy performance requirement.

Example of Calculation Method in operation:
Maximum initial concentration = 70 mg/L
Maximum final concentration = 16 mg/L
Remedy Performance Requirement = 10 mg/L nitrate-nitrogen
Percentage reduction toward remedy performance requirement = (70 - 16)/(70 - 10) = 54/60 = 90%
A reduction of this magnitude would therefore be considered to meet the 90 percent reduction standard discussed immediately above.

b.) If Background Water Quality is the remedy performance requirement, as set forth in Section 1.1.b:
The calculation method accounts for possible changes in background concentration over time, and measures the percent change of the difference between the maximum down-gradient and background concentrations (i.e., a comparison between initial and final difference).
Example of the Calculation Method in operation:
Maximum initial concentration = 70 mg/L
Initial Background = 19 mg/L

Maximum final concentration = 18 mg/L
Final Background = 15 mg/L
Initial Difference (background vs. maximum down gradient) = 70 - 19 = 51 mg/L
Final Difference = 18 - 15 = 3 mg/L
Percentage reduction toward background = 1 - (18 - 15)/(70 - 19) = 1 - (3/51) = 94.1%

1.3.2 WATER SUPPLY WELL PROTECTION

a.) If Defendants identify, by MNA delineation or other monitoring activities required by this Decree, an exceedance of the least stringent performance standard set forth in Section 1.1 at a water supply well used for human consumption, Defendants shall provide alternative water supplies to the well user within 72 hours of receipt of preliminary laboratory analytical data demonstrating such exceedance.

b.) If the provision of alternative water supplies is required, Defendants may at any time evaluate the likely source(s) of elevated nitrate-nitrogen triggering such requirement at the subject well. If Defendants decline to evaluate the source, or if Defendants' evaluation demonstrates that the elevated nitrate-nitrogen is substantially derived from suspected leakage from Infrastructure Source(s), Defendants shall continue provision of alternative water supplies until nitrate-nitrogen concentrations at the supply well decline below the applicable remedy standard from Section 1.1.

c.) If Defendants conclude that the elevated nitrate-nitrogen is not substantially derived from suspected leakage from Infrastructure Source(s), Defendants may submit evidence of this conclusion to EPA together with a request to discontinue provision of alternative water supply. Upon receipt of Defendants' request, EPA shall, within 60 days, either approve the request, reject the request with comments, or request additional information. If EPA approves Defendants' request, Defendants may notify water supply recipient(s) and discontinue provision of alternative water supply upon receipt of such approval. If EPA does not approve Defendants' request, Defendants shall, within 30 days of receiving EPA's response, either (i) revise the submittal consistent with EPA's comments or request for additional information, or (ii) submit the matter for Formal Dispute Resolution under Section IX of this Consent Decree. Defendants shall continue to provide alternative water supplies as required until EPA approves a request to discontinue such provision, or until the Court so provides following the Dispute Resolution process.

d.) If Defendants detect, by MNA monitoring or otherwise, indications that a portion of the plume is moving beyond the monitoring network, Defendants shall either: (1) track that portion of the plume to determine whether it may threaten any water supply well, in accordance with a schedule and approach approved by EPA; or (2) implement an Alternate Remedy to address that portion of the plume, using the schedule and approach provided by Section 1.4.

1.4 ALTERNATIVE REMEDIES

If the MNA remedy does not meet the performance requirements set forth in Section 1.3.1 or if any other term of this Consent Decree requires Defendants to perform an Alternative Remedy, Defendants shall submit an Alternative Remedy Work Plan, including an implementation schedule, within 90 days of the identification of remedy failure or the occurrence of any other condition triggering performance of Section 1.4, as follows:

a.) The Alternative Remedy Work Plan shall include:

1) A detailed description of the alternative remedy, which may include an enhancement of MNA if such enhancement appears likely to allow MNA to meet remedy requirements. Other possible remedies include hydraulic control, carbohydrate addition, and/or phytoremediation. Other alternatives may be proposed by Defendants, and EPA will not unreasonably refuse to allow the use of such alternatives.

2) A detailed explanation demonstrating that the proposed alternative(s) are likely to achieve the remedy performance requirements of Section 1.1 within 15 years of the Start Date, unless a lesser timeframe is agreed to by the parties.

3) In the event Defendants are required to implement an Alternative Remedy by virtue of Section 1.3.1.6, a schedule of implementation to completion not to exceed 4 years.

b.) EPA may approve the Work Plan or decline to approve it and provide written comments. Within 60 days of receiving written comments from EPA, Defendants shall either (a) revise the submittal consistent with the written comments and provide the revised submittal for final approval to Plaintiffs; or (b) submit the matter for dispute resolution, in accordance with the terms of this Decree. Upon receipt of EPA's final approval of the Plan, or upon completion of the dispute resolution process, Defendants shall implement the approved submittal in accordance with the schedule specified therein.

1.5 TERMINATION OF MNA OR ALTERNATIVE REMEDY

a.) The MNA remedy, or the Alternative Remedy if one has been required, will be considered complete when the maximum ground water concentration in the plume is less than the applicable cleanup standard set forth in Section 1.1 for two consecutive sampling events.

b.) At the termination of the MNA remedy, or the Alternative Remedy if one has been required, Defendants shall plug and abandon all MNA monitoring wells, except well 519-04 at Lacey 1 Bryan. Defendants will maintain well 519-04 until it is no longer required for monitoring purposes under applicable Oklahoma regulations.

1.6 ANNUAL REPORTING

In accordance with Sections XIII and XIV of this Consent Decree (Notices and Submittals and Submissions Requiring EPA Approval), Defendants shall provide an Annual Report (see also Section 2.7 of Appendix C) to EPA on or before January 31 of each year for the previous calendar year (or on another schedule for annual submission as approved by EPA). Unless a different reporting timeframe is identified in this Appendix B for data, analytical results, evaluations, or other information, Defendants shall report information generated pursuant to activities required by the following provisions of this Appendix B, as applicable for any given year, to the EPA project Manager in this Annual Report. Any other information required to be reported to EPA in this Appendix B may also be submitted as a part of this Annual Report, so long as such reporting does not extend the time for such submittal beyond applicable timeframes specified herein.

a.) Section 1.2.4(a)(4): Results of microbial analysis with digital copies of lab reports;

b.) Section 1.3.1.1: Annual ground water sampling results from MNA monitoring, including potentiometric surface maps, with digital copies of laboratory reports and field documentation;

c.) Section 1.3.1.4, 1.3.1.5 and 1.3.1.6: MNA performance evaluations (so long as these are provided within 120 days of Defendant's receipt of preliminary analytical data from MNA ground water sampling);

d.) Section 1.3.1.5: Background concentration submittal and supporting data;

e.) Section 1.3.1.7: Percentage reduction calculations; and

f.) Section 1.4: Reporting on the implementation, effectiveness, and progress of any alternative remedy.

1.7 EARLY COMPLIANCE

To the extent Defendants have commenced implementation of the actions specified in Sections 1.2 or 1.3 at any time after January 1, 2006 but prior to entry of this Consent Decree and in full compliance with the requirements stated herein, such actions may be credited as compliance with these Sections if Defendants submit a report for EPA's approval no later than 90 days after entry of this Decree or in their first Annual Report submitted pursuant to this Section, whichever is later, explaining what early compliance actions were taken and certifying, in compliance with Section XIV of this Consent Decree, that all such actions were taken in compliance with all the requirements of this Consent Decree. If, after review of this submittal, EPA determines that the actions taken comply with the requirements of this Consent Decree, EPA shall so notify Defendants within 180 days of receipt of Defendants' report.

APPENDIX C: CHANGES TO BARNS, LAGOONS, AND PIPING

2.1 LAGOON REMOVAL AT LACEY 4 GRIMES AND LACEY 6 MILLER

No later than 24 months after entry of this Consent Decree (which time may be extended by EPA following a written request by Defendants setting forth the basis for such an extension), Defendants shall remove the existing lagoons at Lacey 4 Grimes and Lacey 6 Miller, as follows:

a.) Defendants shall remove the liners and bio-solids from the existing lagoons and compost same for off-site reuse, dispose off site at a licensed landfill, or land apply off-site at agronomic rates, in compliance with all applicable laws and regulations.

b.) Defendants shall remove all soils below existing liners that are visibly contaminated and dispose of or land-apply on-site or off-site at agronomic rates, in compliance with all applicable laws and regulations.

c.) Defendants shall grid-sample the entire area of each removed lagoon, up to and including the high-water line for the lagoon, on 40 foot centers with 5 samples composited per grid and, at Defendants' election, either:

1) Analyze samples in the laboratory for electrical conductance (EC); or

2) Analyze samples in the field using field leaching procedures and a test kit, with limited laboratory confirmation, by sending one composite sample per every 20 composite samples to a laboratory for analysis.

Defendants shall remove all soils at depths of 3 feet or less and of lateral extent less than ¼ acre with nitrate-nitrogen concentrations greater than 100 mg/kg (or EC greater than 120 percent of background). If field sampling suggests that there are larger or deeper areas with concentrations greater than 100 mg/kg nitrate-nitrogen (or EC greater than 120 percent of background), Defendants may propose an alternative approach for these larger, deeper areas, subject to EPA approval.

Defendants shall provide all results of grid sampling to EPA's project manager within 45 days of receipt of preliminary laboratory analytical data.

d.) Whenever materials are land applied pursuant to 2.1(b) above, Defendants shall determine the agronomic rate of application in compliance with Title 35, Chapter 17, Subchapter 3, Section 14 of the Oklahoma Administrative Code, utilizing guidance found in USDA NRCS Waste Utilization Standard 633 (except that Defendants will not be required to incorporate/till into any fields the materials applied pursuant to Paragraph 2.1(b) above), Oklahoma Conservation Practice Standard Nutrient Management 590, and OSU Extension Fact Sheet F-2225. Upon request, Defendants shall provide to EPA the yield goals utilized in this determination and the information and sources on which such yield goals were based.

2.2 LACEY 6 MILLER INFRASTRUCTURE RESPONSE

Defendants shall, within 30 days of entry of this CD, provide a written report to EPA describing all efforts undertaken to date to assess the likely source of elevated nitrate-nitrogen along the west end of the Lacey 6 Miller barns and shall perform additional assessment that the EPA deems necessary to characterize the elevated nitrate-nitrogen in groundwater, based on EPA's review of Defendant's submittal. At the conclusion of any required assessment, if EPA concludes that a response is required to eliminate the Infrastructure Source or to restore groundwater to the Section 1.1 cleanup objectives within a reasonable timeframe, Defendants shall propose a Work

Plan setting forth an appropriate remedy to EPA within 60 days of EPA providing written notice of this conclusion.

EPA may approve the Work Plan or decline to approve it and provide written comments. Within 60 days of receiving written comments from EPA, Defendants shall either (a) revise the submittal consistent with the written comments and provide the revised submittal for final approval to EPA; or (b) submit the matter for dispute resolution, in accordance with the terms of this Decree. Upon receipt of EPA's final approval of the Plan, or upon completion of the dispute resolution process, Defendants shall implement the approved submittal in accordance with the schedule specified therein.

2.3 LAGOON LEAK DETECTION VIA GROUND WATER MONITORING OR LEACHATE COLLECTION

Seaboard shall conduct all sample analyses pursuant to Oklahoma Title 35, Chapter 17, Subchapter 3, Section 35:17-3-11.(e)(6)(H). All sampling events shall also include field measurement for temperature. All monitor well sampling events shall record depth to water.

2.3.1 LEACHATE COLLECTION

Seaboard shall conduct leachate monitoring at Lacey 4 Grimes and Lacey 6 Miller solely through a leak detection system (without the use of monitoring wells) and respond if and to the extent required by section 2.4(a). Seaboard shall monitor this system monthly at its collection sump for five years following entry of this Decree, and thereafter pursuant to State requirements. The volume of leachate recovered shall be recorded, or noted in the facility operating records as having been examined and found to not have liquid available for sampling. Seaboard shall make analytical results available to EPA upon request.

2.3.2 GROUND WATER MONITORING

Seaboard shall conduct ground water monitoring for leak detection at Lacey 1 Bryan and Norris, Lacey 3 Watson, and Fairview Nursery Complex as follows (except to the extent that such monitoring is being performed by the State of Oklahoma and Seaboard does not contest the results of such monitoring), and respond if and to the extent required by section 2.4(c):

a.) Seaboard shall perform semi-annual ground water monitoring (except to the extent that such monitoring is being performed by the State of Oklahoma and Seaboard does not contest the results of such monitoring) for five years following entry of this Decree, using only the following wells:

Bryan Sow

Upgradient wells for barns – 519-05, 519-11, 519-14
Downgradient wells for barns – 519-07, 519-15
Upgradient wells for lagoon – 519-04, 519-10, 519-11
Downgradient wells for lagoon – 519-05, 519-08, 519-09

Norris

Upgradient wells for barns– 6540-05, 6540-06, 6540-07
Downgradient wells for barns – 6540-04, 6540-10

Watson Finisher

Upgradient wells for barns – 580-07, 580-09
Downgradient wells for barns – 580-05, 580-08, 580-14
Upgradient wells for lagoon – 580-04, 580-10
Downgradient wells for lagoon – 580-06, 580-11

Fairview Nursery 1
Downgradient wells – 6200-06

Fairview Nursery 3
Upgradient wells – 3200-01

b.) Seaboard shall perform annual ground water monitoring (except to the extent that such monitoring is being performed by the State of Oklahoma and Seaboard does not contest the results of such monitoring) for five years using only the following wells:

Fairview Nursery 1
Upgradient wells – 6200-9
Downgradient wells – 6200-3, 6200-07, 6200-08

Fairview Nursery 2
Upgradient wells – 6300-07
Downgradient wells – 6300-04, 6300-05, 6300-06

Fairview Nursery 3
Upgradient wells – 3200-06
Downgradient wells – 3200-02, 3200-05, 3200-08

Fairview Nursery 4
Upgradient wells – 3300-01, 3300-05
Downgradient wells – 3300-02, 3300-03, 3300-04

c.) Any well not identified above will not be used for ground water monitoring.

d.) Seaboard will plug and abandon monitoring wells 519-06, 585-04, 6200- 04, 6300-02, and 6300-03. These wells will not be replaced.

e.) After the end of the five-year semi-annual monitoring period, Seaboard intends to perform all monitoring on an annual basis following Oklahoma CAFO regulations (except to the extent that such monitoring is being performed by the State of Oklahoma), and using the well sets identified in 2.3.2(a) and 2.3.2(b), above. However, a failure to do so will not be a violation of this Decree.

f.) Reporting Requirements: Defendants shall provide all ground water monitoring data to EPA within 45 days of receipt of preliminary or final laboratory analytical data, whichever is received earlier.

2.4 LEAK DETECTION RESPONSE

a.) With respect to the lagoons at Lacey 4 Grimes or Lacey 6 Miller, for five years following entry of this Decree, if collected leachate tests higher than 10 mg/L nitrate-nitrogen, Seaboard shall notify EPA of these results when they are reported to the State of Oklahoma or within 30 days of Seaboard's receipt of the preliminary laboratory analytical data, whichever occurs first.

b.) With respect to the lagoons at Lacey 1 Bryan and Norris, Lacey 3 Watson, and the Fairview Nursery Complex, Defendants shall, within 90 days after entry of this Consent Decree, propose to EPA a buffer zone for each farm, using MODFLOW or another EPA-approved alternative, that represents the predicted aerial extent of ground water

contamination from facility Infrastructure Source(s) after a period of seven years. Defendants may update the inputs to the buffer zone model at any time, using new fate and transport data, to revise the buffer zone extent, subject to EPA approval of the revision.

c.) For five years following entry of this Decree, with respect to the lagoons at Lacey 1 Bryan and Norris, Lacey 3 Watson, and the Fairview Nursery Complex, if at any of these farms, Seaboard or EPA identifies a 12 mg/L nitrate-nitrogen or higher differential between up-gradient and down-gradient levels in ground water, such condition will be deemed a "trigger condition" (i.e., a ground water observation that indicates probable Infrastructure Source leakage), and Seaboard shall respond as follows:

1.) Ground water monitoring conducted pursuant to section 2.3.2 above shall utilize only the well sets identified for each farm in section 2.3.2. Seaboard shall not use any water supply wells for leak detection monitoring.

2.) For each individual monitoring event, the maximum up-gradient concentration from each well set shall be compared to the maximum down-gradient concentration from each well set to calculate the difference.

3.) Seaboard shall confirm any observed trigger condition with a second sampling event. Seaboard shall provide the results from this second sampling event to EPA within 120 days of the initial notice to EPA of the detection of a trigger condition. If a trigger condition is confirmed by the second sampling, Seaboard shall continue to assess the likelihood and extent of leakage due to Infrastructure Source(s), as required in Paragraphs 4 through 7 of this section.

4.) Seaboard shall perform a DPT ground water assessment at any Infrastructure Source experiencing a confirmed trigger condition and report results to EPA within 30 days of receipt of preliminary laboratory analytical data. If this data verifies the apparent presence of a leakage condition, the Infrastructure Source will be considered suspect and Seaboard shall commence a 6-month evaluation period for that Infrastructure Source.

5.) During the 6-month evaluation period, Seaboard shall install an in-well data-logger in at least one down gradient well, and shall sample the other surrounding monitor wells (listed in Section 2.3.2) at least monthly. For all farms subject to this Consent Decree, no more than two wells in total shall be monitored with data loggers at any one time. Seaboard may also elect to perform additional DPT assessments.

6.) If human groundwater consumption occurs within the buffer zone of a suspect infrastructure, Seaboard shall, within 60 days of identifying such consumption, propose to EPA interim remedies to mitigate or control potential exposures to nitrate-nitrogen in ground water, including but not limited to carbohydrate addition, hydraulic control, and exposure control. Upon EPA's approval, Seaboard shall implement such interim remedies in accordance with an EPA-approved schedule.

7.) If the testing performed during the evaluation period confirms the likely presence of leakage, Seaboard shall also submit to EPA a plan and schedule for repairs within 30 days of the completion of the evaluation period. If no leak is confirmed, the normal monitoring program will be resumed.

8.) In the event of 2 or more false positive triggers at any farm, Seaboard's evaluation procedure shall be re-evaluated and revised as warranted.

2.5 PIPE INTEGRITY EVALUATION

a.) Seaboard shall perform annual pressure testing of lagoon-to-center pivot piping at all farms listed in Appendix A for four years following entry of this Decree, in accordance with the following test procedures:

1.) Pressurize the piping to normal field operation pressure using a small pump.

2.) Maintain pressurization for 30 minutes.

3.) Line pressure drops of less than 10 percent of the initial test pressure during the test period will be considered passing.

b.) If a pressure test indicates that the piping suffers from any lack of mechanical integrity, Seaboard shall complete repairs on the line before its next use, and following repairs, retest to confirm efficacy of repairs.

c.) While Seaboard intends to continue this annual pressure testing beyond the four-year term provided in this Appendix, a failure to do so will not be a violation of this Decree.

2.6 LACEY 3 WATSON RESPONSE

Within 90 days after entry of this Decree, Defendants shall initiate, with the submission of a work plan to EPA, the following additional ground water operations/investigations at Lacey 3 Watson, as follows:

a) Perform ground water sampling along the southern portion of the western property line. A minimum of 25 DPT sampling locations shall be evenly spaced between the southern terminus of sampling (i.e., due West of MW 580-12) and the northern terminus of sampling (i.e., due West of MW 580-10), along the western property boundary.

b) Survey MW 580-11 using a borehole camera or other technique to confirm or refute the integrity of the well.

c) Analyze samples for nitrate-nitrogen using field test methods with limited (e.g., 10 percent) laboratory confirmation.

d) Analyze two nitrate-nitrogen samples isotopically, selecting samples with highest field nitrate-nitrogen concentrations for analysis.

e) Defendants shall, within 30 days after completion of the operations and investigations herein required, submit a report to EPA including all data obtained from field work and Defendants' conclusion regarding nitrate-nitrogen source(s).

f) If EPA finds that elevated nitrate-nitrogen in ground water above the performance standard specified in section 1.1 of Appendix B is substantially derived from suspected leakage from Infrastructure Source(s), EPA, after consulting with ODAFF to ascertain the action (if any) that ODAFF is or will be taking, may notify Defendants of these conclusions, provide supporting rationale, and request that Defendants prepare and

perform a Watson Response Plan ("WRP" or "Plan") as provided in Paragraph (i), below.

g) If Defendants do not contest EPA's conclusion, Defendants shall comply with Paragraph (i) below.

h) If Defendants elect to contest EPA's conclusion, they shall so notify EPA within thirty (30) days of receipt of EPA's notification, and submit documentation in support of their position. EPA may either concur in Defendants' analysis or reject Defendants' conclusion and provide written comments. If EPA rejects Defendants' conclusion, then within thirty (30) days of receiving EPA's written comments, Defendants shall either:

(1) submit and implement a WRP as provided in Paragraph (i) below; or

(2) submit the matter for Formal Dispute Resolution under Section IX of this Consent Decree.

Defendants's election under this paragraph to contest EPA's conclusion, and its pursuit of the options provided in this paragraph, shall not be deemed to be a violation of this decree regardless of the outcome of these procedures.

i) Within 60 days of an uncontested request by EPA to submit a Watson Response Plan, or within 60 days of the conclusion of any Dispute Resolution Process resulting in the requirement to submit a WRP, Defendants shall:

(1) submit a WRP to EPA that:

(A) is prepared in consultation with EPA and ODAFF;

(B) addresses the ground water remedy only and need not address source removal or Infrastructure Source replacement or repair;

(C) requires Seaboard to achieve the performance standard in Section 1.1 of Appendix B to this Consent Decree; and

(D) is fully consistent with all other terms, conditions, and requirements of Appendix B, except that:

(i) the requirement set forth in Section 1.2.3 (modeling) shall be omitted;

(ii) the requirement set forth in Section 1.2.4(e) (microbial analysis) shall be omitted;

(iii) with respect to the requirements of Section 1.2.4, the WRP shall require two wells to be installed if ground water impact above the performance standard does not extend off property, and requires a minimum of four and a maximum of six wells to be installed if ground water impact above the performance standard extends off property; and

(iv) the "Start Date" described in Section 1.3.2.1 shall be the date of Plan approval by EPA;

and

(2) upon approval of Defendants' WRP by EPA, implement the Plan in accordance with the approved schedule therein.

2.7 ANNUAL REPORTING

In accordance with Sections XIII and XIV of this Consent Decree (Notices and Submittals and Submissions Requiring EPA Approval), Defendants shall provide an Annual Report (see also Section 1.5 of Appendix B) to EPA on or before January 31 of each year for the previous calendar year (or on another schedule for annual submission as approved by EPA). Unless a different reporting timeframe is identified in this Appendix C for data, analytical results, evaluations, or other information, Defendants shall report information generated pursuant to activities required by the following provisions of this Appendix C, as applicable for any given year, to the EPA Project Manager in this Annual Report. Any other information required to be reported to EPA in this Appendix C may also be submitted as a part of this Report, so long as such reporting does not extend the time for such submittal beyond applicable timeframes specified herein.

a) Section 2.1 – All sampling results, status of waste, liner, and soil removal from Lacey 4 Grimes and Lacey 6 Miller lagoons, including approximate quantities of materials removed, and locations to which materials were sent or land-applied. Regarding each such location, Defendants shall provide the results for the soil total nitrogen analyses performed prior to application, and all available historical yield information.

b) Section 2.3 – All leachate and ground water monitoring results, including potentiometric surface maps, with digital copies of laboratory analytical reports.

c) Section 2.5 – All results of annual piping pressure tests, as well as documentation of any repairs and retesting completed.

2.8 EARLY COMPLIANCE

a) To the extent Defendants have commenced implementation of the actions specified in Sections 2.3, 2.4, or 2.5 at any time after January 1, 2006, but prior to entry of this Decree, and in full compliance with the requirements stated therein, Defendants may request credit for such period of early compliance against the five-year term of Sections 2.3 or 2.4, or the four-year term of Section 2.5. To obtain such credit, Defendants must submit a report for EPA's approval no later than 90 days after entry of this Decree or in their first Annual Report submitted pursuant to this Section, whichever is later, explaining what early compliance actions were taken, proposing a new end-date for the relevant requirement, and certifying, in compliance with Section XIII (Notices and Submittals) of this Consent Decree, that all such actions were taken in compliance with all the requirements of this Consent Decree. After review of this submittal, if EPA determines that the actions taken comply with the requirements of this Consent Decree, EPA shall so notify Defendants within 180 days of receipt of Defendants report and specify the new end-date that reflects the period of early compliance for the relevant requirement.

b) To the extent Defendants have commenced implementation of the actions specified in Sections 2.1, 2.2, 2.4(b), or 2.6 at any time after January 1, 2006, but prior to entry of this Consent Decree, and in full compliance with the requirements stated herein, such actions may be credited as compliance with these Sections if

Defendants submit a report for EPA's approval no later than 90 days after entry of this Decree or in their first Annual Report submitted pursuant to this Section, whichever is later, explaining what early compliance actions were taken and certifying, in compliance with Section XIII (Notices and Submittals) of this Consent Decree, that all such actions were taken in compliance with all the requirements of this Consent Decree. If, after review of this submittal, EPA determines that the actions taken comply with the requirements of this Consent Decree, EPA shall so notify Defendants within 180 days of receipt of Defendants' report.

APPENDIX D:

EFFLUENT MANAGEMENT, TESTING, APPLICATION, AND RESPONSE ACTIONS

Except where specifically indicated, the requirements of this Appendix D apply to land application areas ("LAAs"), both center pivot and hard hose, at all Appendix A Farms. The following requirements will terminate four years after entry of this Consent Decree unless another time period is expressly provided herein.

3.0 GRAZING

Seaboard shall not allow grazing to be performed on the land application areas.

3.1 APPLICATION TESTING OF LAND APPLICATION AREA (LAA) SURFACE SOIL

Defendant shall commence application testing, as required in 3.1.1 and 3.1.2, no later than 30 days after entry of this Decree. Defendant shall perform the pre-application testing of LAAs set forth in 3.1.1 and 3.1.2 before each and every land application event on a LAA for four years after entry of this Decree. Application testing will address total nitrogen and moisture levels in soils prior to each land application event. Results from each such test will be made available to EPA upon request.

3.1.1 NITROGEN MONITORING

Seaboard shall conduct all total nitrogen testing and monitoring in accordance with the following criteria:

a.) Pre-application sampling and data evaluation shall follow applicable Oklahoma State University (OSU) Extension Service Guidelines. Applied nitrogen must not exceed crop needs.

b.) Prior to application, soil samples will be collected at 0 to 6 inches and below the root zone and, if the sample in the top 6" does not extend below the root zone of the crop planted, soil samples will be collected from 6 to 24 inches below the surface. Twenty discrete pre-application samples, per depth interval, will be collected per pivot or hard hose area at locations representative of various soil types present in a "Z" pattern covering the entire LAA. Discrete samples will be composited into one sample per pivot or hard hose area and analyzed for total nitrogen.

c.) Pre-application analysis of lagoon effluent for Total Kjeldahl Nitrogen (TKN) will be performed.

d.) Plant Available Nitrogen (PAN) is to be calculated as 0.5 x TKN.

3.1.2 MOISTURE MONITORING - METHOD TO BE APPLIED IN EACH INSTANCE SOIL MOISTURE IS MONITORED

a.) Seaboard shall measure soil moisture at 6 inches and also below the root zone if the measurement in the top 6 inches does not extend below the root zone of the crop planted.

b.) Seaboard shall test a minimum of 4 locations per hard hose or pivot area.

c.) Seaboard shall not apply effluent when pre-application soil moisture plus effluent moisture would exceed field capacity. "Field capacity" is the maximum amount of water that a soil can retain after excess water from saturated conditions has been drained by the force of gravity.

d.) Seaboard may opt to use wetting front test equipment in lieu of moisture probes to determine soil moisture for application areas where this equipment is present.

3.2 WETTING FRONT TESTING

a.) The purpose of the required wetting front testing is to evaluate whether effluent application results in effluent wetting front movement through soils to below the root zone. Defendants shall perform this testing at the pivot area at Lacey 3 Watson and at the pivot and hard hose areas at Fairview Nursery Complex.

b.) Defendant shall order wetting front testing equipment described herein within 30 days of the entry of this Decree, and shall install such equipment within 60 days of receipt of that equipment. The approximate one-year wetting front testing period described herein shall commence at the installation of the wetting front equipment.

3.2.1 TESTING REQUIREMENTS

a.) The anticipated test duration will be approximately one year. For each Farm, if area precipitation is less than 75 percent or greater than 125 percent of average for the test period, EPA may require Defendants to perform an additional 4 test events in compliance with this subsection. The source for precipitation data will be the Oklahoma Mesonet station nearest to each farm.

b.) Defendants shall perform four test events, each separated by at least four weeks, during an approximately one-year period. This schedule may be modified as required due to weather conditions.

c.) Each test event shall begin 12 hours before application and end 7 days after application is completed. If greater than 0.4 inches of rainfall occur on-site within 72 hours of the completion of application, data acquisition will be terminated, the test will be considered a rainout, and will be repeated. If greater than 0.4 inches of rainfall occur on site during the test event, but more than 72 hours after the completion of application, data acquisition will be terminated by Defendants, and the test will not be repeated. Defendants will provide data from terminated tests to EPA.

d.) Defendants shall place measurement probe clusters in the application areas to obtain data. At least one week prior to such placement, Defendants shall notify EPA in writing of its intended schedule for the probes' placement. Defendants shall place a total of four probe clusters in each of the center pivot areas at the Lacey 3 Watson and Fairview Nursery Complex farms, and two probe clusters in the hard hose area at the Fairview Nursery Complex.

e.) Each probe cluster shall consist of multiple probes placed at approximate 5" intervals from 5" to approximately 35" below ground level. Probes will transmit soil moisture data to a data logger. The probes and datalogger shall be those manufactured by GrowSmart or be an alternative approved by EPA.

f.) Defendants shall notify EPA in writing one week in advance of each test event. If a test is rescheduled due to weather or other conditions, Defendants shall notify EPA orally of the new schedule for testing as soon as practical.

g.) If Defendants identify the presence of a wetting front during the 4th test event, Defendants shall perform a 5th test event following the above criteria. This test event will be performed to evaluate the effectiveness of land application practice changes implemented in response to the 4th event findings. Regardless of the 5th event findings, however, wetting front testing need not continue.

3.2.2 REQUIREMENT FOR RESPONSE ACTIONS

If moisture movement exceeds the shallower of either:

a.) the reach of the planned adult crop root zone, or

b.) 35 inches below ground level,

then Defendants shall notify the EPA RCRA Project Manager within 30 days of receipt of data, pursuant to Section XIII (Notices and Submittals) of this Consent Decree, and immediately implement the appropriate Response Action(s) pursuant to Section 3.4 of this Appendix to rectify the measured exceedance.

3.2.3 REPORTING REQUIREMENTS

Defendants shall report to EPA the full results of all testing required herein within 30 days of the conclusion of each test.

3.3 ANNUAL EFFLUENT APPLICATION AND MANAGEMENT REPORT

3.3.1 LAND APPLICATION RECORDS REPORTING:

No later than January 31 after entry of this Consent Decree, and annually for three years thereafter, Seaboard shall submit to the EPA Project Manager land application records kept in the ordinary course of business regarding land application events that occur on fields included in the ODAFF permits issued to each of the farms listed in Appendix A, excluding the Choate Farm. The records shall include, at a minimum, the following information for each land application event that occurred in the relevant year:

a.) The name and number of the farm from which effluent was applied.

b.) The legal description of the field and the number of acres on which land application occurred.

c.) The type of crop on which effluent was applied and the yield goal for which the agronomic rate was calculated.

d.) The method used to apply waste at each application site (e.g., center pivot, honey wagon, flood, manure spreader, hard hose, etc.).

e.) All records of any solid waste and/or effluent analysis taken prior to land application at each application site.

f.) All records of soil analysis, including any total nitrogen tests and soil moisture tests.

g.) Information as to whether effluent was blended with fresh water prior to land application and if so, the ratio of fresh water to effluent.

h.) The quantity of solid waste and/or effluent that was applied to each field, and for what time frame (i.e., start time and date, stop time and date, and volume applied).

i.) Rainfall records for the period during which application occurred.

3.3.2 SUPPLEMENTAL ANNUAL LAND APPLICATION REPORTING REQUIREMENTS

In addition to the routine records provided pursuant to 3.3.1 above, no later than January 31 after entry of this Consent Decree, and annually for three years thereafter, Seaboard shall submit the following information to the EPA Project Manager for each application site at each field and/or farm described in 3.3.1 above:

a.) For each application site on which commercial fertilizer was applied as well as solid waste and/or effluent: the type of fertilizer used, and where, when and how much fertilizer was applied; and

b.) For each application site, all information available to Seaboard (directly or from lease farmers) regarding the actual yield for each crop.

3.3.3 ONE-TIME LAND APPLICATION REPORTING REQUIREMENT

Within 30 days of entry of this Decree, Seaboard shall provide the following information to the EPA Project Manager regarding each of the farms listed in Appendix A (except Choate):

a.) The maximum permitted capacity of each farm;

b.) Information as to whether each farm has a recycle system or uses fresh water to recharge the pits; and

c.) The average amount of fresh water used at each farm annually, based on data from the most recent three years.

3.4 RESPONSE ACTIONS

If EPA or Defendants determine that (a) the results from a pre-application test indicate applied nitrogen exceeds crop needs (see (a) below), (b) the results from a moisture test indicate pre-application moisture plus effluent moisture would exceed field capacity (see (b) below), or (c) the results from a wetting front test indicates that effluent application has caused the effluent wetting front to move through the soil below the root zone (see (c) below), Defendants shall immediately implement one or more of the following response actions, as applicable:

a.) Excess Nitrogen:

1.) Change the crop;

2.) Apply excess nitrogen on an alternative site that has been demonstrated to be capable of safely receiving such nitrogen;

3.) Modify farm's waste management technology, such as use of evaporative or nitrification/denitrification system (notify EPA Project Manager prior to implementation); or

4.) Other solution (notify EPA Project Manager prior to implementation).

b.) Excess Moisture:

1.) Allow excess soil moisture to attenuate naturally before application; or

2.) Other solution (notify EPA Project Manager prior to implementation).

c.) Wetting Front has Moved Below Root Zone:

1.) Modify application rates or application procedures, perform one additional wetting front test (total number of tests not to exceed 5 as specified in 3.2.1(g)) to demonstrate efficacy of modification, and report results to EPA;

2.) Re-evaluate measurement of field moisture or calculation of field capacity, perform one additional wetting front test (total number of tests not to exceed 5 as specified in 3.2.1(g)) to demonstrate efficacy, and report results to EPA; or

3.) Other solution (consult with EPA Project Manager prior to implementation).

3.5 FAIRVIEW NURSERY COMPLEX RESPONSE

On April 20, 2006, Seaboard and the State of Oklahoma entered into a "Settlement Agreement" and in Paragraph 48 thereof, the parties provided a mechanism for addressing potential groundwater contamination at the Fairview Nursery Complex. Pursuant to that provision, if, before April 20, 2010, the Oklahoma Department of Agriculture, Food and Forestry ("ODAFF") obtains information that demonstrates a decline in groundwater quality downgradient of the dedicated land application areas associated with the Fairview Nursery Complex that ODAFF concludes is attributable to Seaboard's application of treated effluent on that property, and if Seaboard agrees with ODAFF's conclusion, Seaboard will develop a responsive action plan that may include further investigation, land application modification(s), or other response actions.

3.5.1. GROUND WATER DATA

For six years after entry of this Consent Decree, EPA will provide to Seaboard and ODAFF, and Seaboard will likewise provide to EPA, all groundwater monitoring or sampling data obtained by EPA or by Seaboard, respectively, from wells in the vicinity of the Fairview Nursery Complex. Each party will provide such data within 30 days of the receipt of preliminary laboratory reports, or within 30 days of obtaining data from another source, unless such data are otherwise required to be provided pursuant to this Consent Decree.

3.5.2 WATER TREATMENT SYSTEMS

a) For the first six years after entry of this Consent Decree, if EPA concludes that groundwater downgradient of the dedicated land application areas at the Fairview Nursery Complex and north of the North Canadian River:

(i) contains nitrate-nitrogen at levels in excess of the performance standard set forth in Section 1.1 of Appendix B; and

(ii) is likely to be drawn by one or more wells that supply drinking water to individuals,

Defendants shall, within 72 hours of receiving a written request from EPA, provide alternative water supplies to specified well users and, within 60 days of a written request from EPA, install and maintain a whole-house, reverse osmosis water treatment system at any residence, dwelling, or other structure downgradient of the Fairview Nursery Complex facility and north of the North Canadian River that utilizes water supplied by the wells referred to in 3.5.2(a)(ii) above.

b) Defendants shall fully maintain any water treatment systems required under Paragraph 3.5.2(a) until (i) EPA finds that the groundwater downgradient of the Fairview Nursery Complex and north of the North Canadian River no longer exceeds the performance standard set forth in Section 1.1 of Appendix B or (ii) the designated residence, dwelling, or other structure is no longer occupied or in use, whichever is earlier.

c) If, however, Defendants conclude that the elevated nitrate-nitrogen at the supply well location is not substantially derived from Defendant's activities at the Fairview Nursery Complex, Defendants may submit evidence of this conclusion to EPA together with a request to discontinue provision of the water treatment systems required by Paragraphs 3.5.2(a) and (b). Upon receipt of Defendants' request, EPA shall, within 60 days, either approve the request, reject the request with comments, or request additional information. If EPA approves Defendants' request, Defendants may notify water treatment recipient(s) and discontinue provision of water treatment systems upon receipt of such approval. If EPA does not approve Defendants' request, Defendants shall, within 30 days of receiving EPA's response, either (i) revise the submittal consistent with EPA's comments or request for additional information, or (ii) submit the matter for Formal Dispute Resolution under Section IX of this Consent Decree. Defendants shall continue to provide required water treatment systems as required until EPA approves a request to discontinue such provision, or until the Court rules that Defendants may discontinue such activities following the Dispute Resolution process.

3.5.3 FAIRVIEW RESPONSE PLAN

a) If, at any time more than two (2) years but less than six (6) years after entry of this Consent Decree, EPA finds (referred to in this Section 3.5 as "EPA's Finding") that the nitrate-nitrogen level in the groundwater downgradient of the dedicated land application areas associated with the Fairview Nursery Complex and north of the North Canadian River:

(i) exceeds the performance standard set forth in Section 1.1 of Appendix B;

(ii) is attributable to Defendants' activities at the Fairview Nursery Complex; and

(iii) is unlikely to be remediated – by actions being undertaken by Seaboard at the time of EPA's Finding – to the level set forth in the Performance Standard set forth in Section 1.1 of Appendix B within 15 years from the date of EPA's Finding,

then EPA, after consulting with ODAFF, may: notify Seaboard and ODAFF of EPA's Finding; provide all data it has obtained related to groundwater at, or groundwater downgradient of, these areas; and request that Seaboard prepare and perform a Fairview Response Plan ("FRP") as provided in Paragraph 3.5.3(d), below.

b) If Seaboard does not contest EPA's Finding, Seaboard shall comply with Paragraph 3.5.3(d) below.

c) If Seaboard elects to contest EPA's Finding, it shall so notify EPA and ODAFF within thirty (30) days of receipt of EPA's notification, and submit documentation in support of its position. After consulting with ODAFF, EPA may either concur in Seaboard's conclusion or reject Seaboard's conclusion and provide written comments. If EPA rejects Seaboard's conclusion, then within thirty (30) days of receiving EPA's written comments, Seaboard shall either:

(i) submit and implement an FRP as provided in Paragraph 3.5.3(d) below; or

(ii) submit the matter for Formal Dispute Resolution under Section IX of this Consent Decree.

Seaboard's election under this Paragraph to contest EPA's Finding, and its pursuit of the options provided in this Paragraph, shall not be deemed to be a violation of this Consent Decree, regardless of the outcome of these procedures.

d) Within sixty (60) days of an uncontested request by EPA to submit an FRP, or within 60 days of the conclusion of any Dispute Resolution process resulting in the requirement to submit an FRP, Seaboard shall:

(i) submit an FRP to EPA and ODAFF that:

(1) is prepared in consultation with EPA and ODAFF;

(2) may include, but is not limited to, further investigation, land application modifications, groundwater sampling, monitoring, or remediation, or other appropriate response actions;

(3) requires Seaboard to achieve the performance standard in Section 1.1 of Appendix B to this Consent Decree; and

(4) is fully consistent with all other terms, conditions, and requirements of Appendix B, except that:

(A) the "Start Date" described in Section 1.3.1.2 shall be a date proposed by Seaboard and approved by EPA; and

(B) the requirements set forth in Section 1.2 may be omitted, provided that, in the event existing wells become unavailable, Seaboard shall install sufficient additional MNA wells to monitor the plume, upon EPA's request.

and:

(ii) upon approval of such FRP by EPA, implement the FRP in accordance with the approved schedule therein.

3.6 EARLY COMPLIANCE

a) To the extent Defendants have commenced implementation of the actions specified in Sections 3.1 or 3.3 at any time after January 1, 2006, but prior to entry

of this Decree, and in full compliance with the requirements stated therein, Defendants may request credit for such period of early compliance against the four-year term of Section 3.1 or the three-year term of Section 3.3. To obtain such credit, Defendants must submit a report for EPA's approval no later than 90 days after entry of this Decree or in their first Annual Report submitted pursuant to this Section, whichever is later, explaining what early compliance actions were taken, proposing a new end-date for the relevant requirement (if applicable), and certifying, in compliance with Section XIII (Notices and Submittals) of this Consent Decree, that all such actions were taken in compliance with all the requirements of this Consent Decree. After review of this submittal, if EPA determines that the actions taken comply with the requirements of this Consent Decree, EPA shall so notify Defendants within 180 days of receipt of Defendants report and specify the new end-date that reflects the period of early compliance for the relevant requirement (if applicable).

b) To the extent Defendants have commenced implementation of the actions specified in Sections 3.2 at any time after January 1, 2006, but prior to entry of this Consent Decree, and in full compliance with the requirements stated herein, such actions may be credited as compliance with these Sections if Defendants submit a report for EPA's approval no later than 90 days after entry of this Decree or in their first Annual Report submitted pursuant to this Section, whichever is later, explaining what early compliance actions were taken and certifying, in compliance with Section XIII (Notices and Submittals) of this Consent Decree, that all such actions were taken in compliance with all the requirements of this Consent Decree. If, after review of this submittal, EPA determines that the actions taken comply with the requirements of this Consent Decree, EPA shall so notify Defendants within 180 days of receipt of Defendants' report.